IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ORLIN ANTONIO CAMPOS-CERNA, Appellant.	No. 38556-2-II PART PUBLISHED OPINION

Van Deren, C.J. — Orlin Campos-Cerna appeals his convictions for first degree murder and attempted first degree murder, arguing that (1) the juvenile warning included in his written *Miranda*[1] advisement invalidated the waiver of his *Miranda* rights and (2) the State's evidence was not sufficient to show that he acted with premeditation. We affirm.

FACTS

On October 11, 2007, an unidentified male shot a gun at a vehicle in Vancouver, Washington, killing one of the two passengers. Acting on a tip, Vancouver Police Detectives John Ringo and Wallace Stefan went to Campos's[2] home to talk with him and then he voluntarily

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] The appellant requested to be referred to as "Campos," rather than "Campos-Cerna." Report of Proceedings (RP) at 157-58.

accompanied them to the police department for questioning. The initial interview took place in a large conference room with outside access through doors and windows. The detectives did not handcuff Campos; they told him that he was free to leave; and, although he was not under arrest, the detectives told Campos that "he ha[d] every right to refuse to speak to [them]." Report of Proceedings (RP) at 393.

Campos initially denied knowledge or involvement in the shooting. When the detectives informed him that the shooting victim had died, Campos "admitted . . . that he had been the individual that was there and had been the individual that had shot and killed . . . Avila." RP at 398. Campos then agreed to and did provide a videotaped statement, during which he repeated that he had shot at the car, resulting in Avila's death. The detectives detained Campos before he gave his statement and, although Campos had initially refused to sign the *Miranda* waiver form as well as the additional juvenile warning, they duly advised him of his *Miranda* rights before and during the recording. The State later charged Campos with first degree murder and attempted first degree murder.

The trial court held a CrR 3.5 hearing to determine the admissibility of Campos's videotaped statement to the police. The detectives believed that Campos understood the rights they had read to him from their standard form. The form stated:

> Before answering any questions, we are required to advise you that:
> 1. You have the right to remain silent.
> 2. Anything you[] say can be used against you in a court of law.
> 3. You have the right at this time to talk to a lawyer and have him present with you while you are being questioned.
> 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
> 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Ex. 2. The signed waiver also included a juvenile warning:

ADDITIONAL WARNING TO PERSONS UNDER 18

> If you are under the age of 18, anything you say can be used against you in a juvenile court prosecution for juvenile offenses and can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult.

Ex. 2 (emphasis omitted). Campos also signed this juvenile warning.[3]

During the ensuing three hour interview, the detectives allowed Campos to go unaccompanied to the bathroom, to get water, and to get food. And when Campos told the detectives that he wanted to speak to his "aunt" and a "cousin or a relative," those individuals were allowed to come to the building, where they "visited and had a conversation" with Campos. RP at 17.

Although Campos initially planned to testify at the CrR 3.5 hearing, he chose not to testify after the trial court informed him of his rights. Campos argued that his signature on the waiver was not "intelligently made" because he did not have counsel present, counsel would have advised him not to give the statement, he was 17, English was not his first language, he only went through the ninth grade in school, and an interpreter was neither offered nor provided. RP at 50. Campos stressed that he did not fully understand the consequences of his decision. The trial court ruled that Campos "understood his rights and made [a] knowing, voluntarily informed waiver of those rights" and admitted his statements. RP at 52. Campos was convicted as charged as an adult.

Campos appeals.

[3] Campos was 17 years old at the time of the shooting and the interview, but turned 18 before trial.

ANALYSIS

Miranda Waiver

Campos argues that the *Miranda* warning he signed was invalid because the additional warning to minors—although it specified that the juvenile court could decide that Campos should be tried as an adult—did not adequately explain that a statute may automatically divest a juvenile court of authority to hear a case in which a juvenile is charged. Campos further contends that because he received defective *Miranda* warnings before his custodial interrogation and arrest, any confession obtained is inadmissible. The State argues that nothing in the record shows that Campos's statement was anything but voluntary, the additional warning did not coerce or confuse Campos, and he did not raise this issue in his CrR 3.5 hearing, thus he waived it. We agree with the State.

A. Standard of Review

Miranda claims are issues of law that we review de novo. *State v. Daniels*, 160 Wn.2d 256, 261, 156 P.3d 905 (2007). We also review de novo the adequacy of a *Miranda* warning and whether there was a valid waiver[4] of *Miranda* rights. *United States v. Connell*, 869 F.2d 1349, 1351 (9th Cir. 1989); *State v. Johnson*, 94 Wn. App. 882, 897, 974 P.2d 855 (1999).

[4] We note that "findings of fact entered following a CrR 3.5 hearing will be verities on appeal if unchallenged; and, if challenged, they are verities if supported by substantial evidence in the record." *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). As Campos's argument only challenges the findings and conclusions to the extent that the trial court erred in its legal view of the *Miranda* waiver's additional juvenile advisement of rights language, our review is de novo.

B. *Miranda* Waiver

The Fifth Amendment to the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." The Washington Constitution article I, section 9 grants a similar right and its protection is coextensive with the right that the Fifth Amendment provides. *State v. Unga*, 165 Wn.2d 95, 100, 196 P.3d 645 (2008). "The State bears the burden of showing a knowing, voluntary, and intelligent waiver of *Miranda* rights by a preponderance of the evidence." *State v. Athan*, 160 Wn.2d 354, 380, 158 P.3d 27 (2007).

Our courts have found "[i]mplied waiver . . . where the record reveals that a defendant understood his rights and volunteered information [and] where the record shows that a defendant's answers were freely and voluntarily made without duress, promise or threat and with a full understanding of his constitutional rights." *State v. Terrovona*, 105 Wn.2d 632, 646-47, 716 P.2d 295 (1986). We also infer a waiver "when a defendant voluntarily discusses the charged crime with police officers and indicates an understanding of his rights." *State v. Ellison*, 36 Wn. App. 564, 571, 676 P.2d 531 (1984).

C. Juvenile's Waiver of *Miranda* Rights

In determining whether a juvenile has voluntarily waived *Miranda* rights, we consider the totality of the circumstances. *State v. Allen*, 63 Wn. App. 623, 626, 821 P.2d 533 (1991). And we evaluate the totality of the circumstances surrounding an interrogation to determine whether the defendant voluntarily gave custodial statements. *Unga*, 165 Wn.2d at 100.

> Circumstances that are potentially relevant in the totality-of-the-circumstances analysis include the "crucial element of police coercion"; the length of the interrogation; its location; its continuity; the defendant's maturity, education, physical condition, and mental health; and whether the police advised the

> defendant of the rights to remain silent and to have counsel present during custodial interrogation.

Unga, 165 Wn.2d at 101 (quoting *Withrow v. Williams*, 507 U.S. 680, 693, 113 S. Ct. 1745, 123 L. Ed. 2d 407 (1993)).

D. Preservation of Issue for Appeal

To preserve a *Miranda* waiver advisement issue for appeal, a defendant must raise the issue at his "CrR 3.5 hearing or the fact-finding portions of the proceedings." *State v. Spearman*, 59 Wn. App. 323, 325, 796 P.2d 727 (1990); *see* RAP 2.5(a); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). But where the waiver involves a manifest error that affects a constitutional right, we may consider it for the first time on appeal. *State v. Brewer*, 148 Wn. App. 666, 673, 205 P.3d 900, *review denied*, *State v. Danielson*, 166 Wn.2d 1016 (2009); RAP 2.5(a)(3). The defendant must identify and show how the alleged constitutional error affected the defendant's rights at trial. Showing actual prejudice demonstrates the "manifest" nature of the error and allows appellate review. *Brewer*, 148 Wn. App. at 673. "[W]hen an adequate record exists, the appellate court may carry out its long-standing duty to assure constitutionally adequate [proceedings] by engaging in review of manifest constitutional errors raised for the first time on appeal." *State v. Contreras*, 92 Wn. App. 307, 313, 966 P.2d 915 (1998).

E. Additional Juvenile Advisement of Rights

Here, Campos focuses on the additional language directed at juveniles, informing him that statements he made after waiving his right to remain silent under *Miranda* could be used against him in an adult court proceeding without the juvenile court first declining jurisdiction. He argues that, before his statement could be used against him, the juvenile court had to actually decline its

jurisdiction over the matter and that the juvenile warning did not advise him that the juvenile court did not have original jurisdiction over certain serious crimes, such as murder or attempted murder or assault. We disagree.

In *Spearman*, Division One of this court held that a juvenile could not raise for the first time on appeal the issue of whether an incomplete juvenile warning invalidated the waiver of *Miranda* rights. 59 Wn. App. at 325. The advisement of rights that Spearman signed stated in part:

> "Anything that I say or sign can be used against me in a court of law. I understand that if I am a juvenile, anything that I say or sign can be used against me in a criminal prosecution in the event that Juvenile Court declines jurisdiction in my case."

Spearman, 59 Wn. App. at 324 (quoting court record). The juvenile court entered an adjudication against Spearman for second degree burglary. *Spearman*, 59 Wn. App. at 324. On appeal, he contended that the "'plain reading'" of the additional juvenile advisement was "that statements made by juveniles can only be used against them when juvenile jurisdiction is declined, and therefore his statements could not be used against him in th[e] juvenile proceeding." He then argued "that because he was not specifically informed that the statements could be used against him in juvenile court, under the totality of the circumstances surrounding the making of the statements, his statements were not knowingly and voluntarily given." *Spearman*, 59 Wn. App. at 325.

The court noted that the record did not demonstrate "that Spearman was in any way confused by the advisement that was read to him and that he initialed." Given the absence of any showing of confusion, the court did "not find any facial defect or ambiguity in the form" because

the first sentence put Spearman on notice that his statement could be used in a court of law, which included the juvenile court. *Spearman*, 59 Wn. App. at 325. Finally, the court stated:

> Although the issue implicates Spearman's constitutional rights, it is not of such truly constitutional magnitude that it can be raised for the first time on appeal. Perhaps the form could be clearer, but it is not constitutionally defective. As stated by the Supreme Court in *State v. Rupe*[, 101 Wn.2d 664, 677, 683 P.2d 571 (1984): "The statement anything you say can be used against you sufficiently alerts a defendant that his statements may be used in court." The court did not err in ruling that Spearman's statements were knowingly and voluntarily given.

Spearman, 59 Wn. App. at 325-26 (footnotes omitted) (internal quotation marks omittedl).

Campos's argument parallels Spearman's argument—he contends that the juvenile warning portion of the advisement invalidated the *Miranda* warning, thereby invalidating his waiver, making his confession inadmissible. But the detectives properly advised Campos of his *Miranda* rights. And, on its face, the juvenile warning notified him that anything he said could be used against him in a court of law. And the juvenile warning provision prepared him for the possibility that an adult court would hear his case and that his statement would be used against him.

Moreover, the juvenile warning does not rule out the possibility that the juvenile court's jurisdiction would automatically be declined and that Campos would appear in adult court without any juvenile court declination hearing. The juvenile warning states that "anything you say . . . can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult." Ex. 2. To derive the meaning that Campos seeks from the juvenile warning, the clause would need to include a biconditional[5] such as "if and only

[5] A "biconditional" is "a statement of a relation between a pair of propositions such that one is true only if the other is simultaneously true, or false if the other is simultaneously false." Webster's Third New International Dictionary 212 (2002).

if."[6] Instead, the juvenile warning gives notice that any statement can be used in an adult proceeding if the juvenile court declines jurisdiction, but it does not rule out the possibility that there are situations in which only an adult court may hear the case.

Here, the advisement provided an adequate explanation of Campos's rights. Campos fails to show any confusion the warning caused since the juvenile warning supplied Campos with notice that his statements could be used against him in an adult court and the juvenile warning did not facially mischaracterize the legal process.

Here, also, the detectives testified that they advised Campos of his *Miranda* rights and that Campos did not ask any questions about his rights or about waiving his rights. Moreover, Campos waived his rights and the detectives did not make any promises or threats, nor did they coerce Campos. Nothing in the record suggests that the detectives convinced Campos to provide a statement through promises that the juvenile court would assume initial jurisdiction over his case.

Because the detectives recorded Campos's statement, the trial court also had the benefit of both hearing him and seeing his demeanor when he waived his rights and confessed to the shooting. And with no evidence to the contrary and no testimony from Campos, the trial court could determine, based on the detectives' testimony and the video, that the detectives adequately advised Campos of his rights and that he knowingly and voluntarily waived those rights. Campos

[6] To illustrate: "Able shall go to the store if eggs are on sale" requires Able to go to the store when eggs are on sale but does not preclude the possibility that Able may go to the store for another reason. By contrast "Able shall go to the store if and only if eggs are on sale" means that Able can only go and must go to the store when eggs are on sale. Some in the legal writing community believe that "only if" is the functional equivalent of "if and only if," but we need not disabuse them of that notion for purposes of this case. *See* Bryan A. Garner, A Dictionary of Modern Legal Usage 414 (2d Ed. 1995).

therefore fails to allege an error of constitutional magnitude that warrants our review.[7]

Furthermore, Campos cannot demonstrate the prejudice necessary to show a manifest constitutional error merely through a denial of juvenile court jurisdiction: "Absent . . . statutory discretion to assign jurisdiction, a defendant cannot suffer prejudice because his case was not adjudicated in juvenile court." *State v. Salavea*, 151 Wn.2d 133, 140, 86 P.3d 125 (2004). Without a showing of prejudice, Campos also cannot establish that the error was manifest.

We hold that the trial court did not err in its conclusion that Campos gave a knowing, voluntary, and intelligent waiver of his *Miranda* rights.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

[7] As in *Spearman,* the juvenile warning could have more clearly explained that the juvenile court's jurisdiction in some instances is automatically declined by operation of statute. Former RCW 13.04.030(1)(e)(v)(E)(I) (2005); *State v. Mora*, 138 Wn.2d 43, 49, 53, 977 P.2d 564 (1999); *In re Pers. Restraint of Boot*, 130 Wn.2d 553, 563, 565, 925 P.2d 964 (1996).

FACTS[8]

On October 11, 2007, Anthony Tirado, Jose Avila, and Avila's brother, Oscar, spent the early part of the evening together at Oscar's apartment drinking beer,[9] eating food, and watching a movie. Avila and Tirado were friends, coworkers, and members of the Norteno[10] gang, although Avila was no longer actively involved in gang activity. After their early evening activities, Avila and Tirado left with plans to drop Tirado off at home and for Avila to meet his

[8] The following facts were adduced at trial about the gangs and gang culture involved in this matter. In Vancouver, Washington, there are rival gangs called the Nortenos and Surenos. The Nortenos, or northerners, originated in northern California, the gang's primary color is red, and the gang is controlled by a prison gang called Nuestra Familia. The Surenos, or southerners, originated in southern California, its primary color is blue, and it is controlled by a prison gang called the Mexican Mafia.

There is also a gang called Mara Salvatrucha, or MS, with origins in El Salvador that formed in Los Angeles, in part to protect its members from the Sureno gang. Mara Salvatrucha appears to have added the number 13 when it aligned itself with the Mexican Mafia and now is known as MS-13. The Mexican Mafia brokered a deal between MS-13 and the Sureno gang, bringing them both under its "umbrella," its division of territory between member gangs, and its taxation of member gangs. RP at 556. Although once independent, MS-13 now seems to be intertwined with the Sureno gang.

Norteno and Sureno members are known to wear belts with gang colors and buckles with letters or numbers that designate their gang affiliation or geographic origin. Gang members that encounter an unknown person may "hit up" that person to ascertain these gang affiliations and geographic origins. RP at 573. It is common in the area of Vancouver around the Town Pump and Lord's Gym for Surenos and Nortenos to "hit up" one another, especially if the other person is in rival colors. Although the neighborhood surrounding the Town Pump is nominally Sureno territory, Nortenos frequent the establishment.

Underlying Norteno and Sureno philosophy is a belief that disrespect from a rival gang toward a member or the gang requires retribution that may be immediate or delayed. These gangs can be violent and a member's size does not dictate the threat he may pose; it is normal for some members to carry weapons, such as guns, knives, bats, and brass knuckles. Unlike other gangs, the Mexican Mafia prohibits Sureno members from doing drive by shootings—members must exit their vehicles before shooting at others. .

[9] Tirado consumed two 24-ounce cans and six 12-ounce bottles of beer, while Avila consumed three 24-ounce cans and six 12-ounce bottles of beer. Tirado supposed he was drunk that night.

[10] Police officers knew Tirado to be an active Norteno gang member.

girlfriend. Tirado wore red clothing, "prominent Norteno colors," while Avila wore a dark jacket that was not identifiable as Norteno, although he did wear a red belt with a capital letter N on it that was not visible from outside the car.

As Avila drove west on Fourth Plain, a car pulled up next to them. Tirado noticed Avila looking out the driver's side window and Tirado saw the driver in the other car "mean mugging" them.[11] RP at 178. Tirado did not recognize the driver and could only discern that he wore a dark shirt. The other driver pulled ahead of Avila and Avila followed behind the other car at a normal speed. The other car turned right on Fairmont and Avila turned to continue following the car, heading north. Then, the car turned left on 26th heading west and Avila began turning right. But Avila noticed that the other car had stopped and parked. He made a remark about the other driver parking and stopped his car, put the car in reverse, and backed into the middle of the intersection at a normal speed.[12]

Tirado heard a "pop-pop" sound, then looked back and saw someone walking toward his side of the car while shooting a gun, so he ducked down. RP at 344. Tirado said that he did not exit the car and could not identify the shooter, but thought that he heard at least six shots without pause that became louder and louder. The bullets struck the passenger side of Avila's car and the shots that hit the windshield came from the passenger side. The vehicle, at some point, stopped in the intersection facing east on 26th Street. When the shooting stopped, the other car quickly sped away and Tirado exited Avila's car. Tirado realized that a bullet had struck Avila, although he did

[11] "Mean mugging" occurs when a person looks at another with an expression of displeasure. RP at 333.

[12] Answering a question about whether the car was backing up at a speed greater than five miles an hour, Tirado said that he thought it was "[m]aybe at its maximum speed, yeah." RP at 371.

not know where, and he sought help.

Avila's death was caused by a gunshot wound to the back right portion of his head. The bullet's trajectory "was right to left and slightly upward," and a ricochet could have caused the injury. RP at 620. The shooter seems to have shot Avila from the rear passenger side area outside the car and, based on a shooter's height of five feet nine inches (Campos's height) and a gun held at shoulder length, it appears the shooter was a maximum of eleven feet nine inches from the car—the distance is potentially less if the shooter held the gun lower. There was no gunshot residue recovered from the car which, if present, might have indicated shots from a closer range. The bullets created "elongated divot impressions in the . . . sheet metal, . . . as if something hit it and slid along it without breaking the actual metal." RP at 284. And from a detective's examination of the car and calculations, it appears that the shooter fired from two general areas into the car.

Beatrice Converse, who lives near the intersection, "heard what sounded like fireworks" but realized "that's not fireworks, that's gunshot." RP at 294. She stated that the gunshots came in rapid succession and lasted less than two seconds. Sara Scuato, another neighbor, said that she heard seven gunshots and then heard an engine revving. When Converse looked out the window a minute later she "saw a young man running in the street around a car that was stopped in the middle of the road" and heard the man saying "'[s]omething happened to my friend.'" RP at 294-95. She watched as he tried to get help but did not see a second vehicle. Both women called 9-1-1; Scuato went outside, removed Avila's foot from the gas pedal, and convinced Tirado to shut off the car's engine.

Dispatched police officers arrived within minutes of the 9-1-1 calls. Police found Avila's

vehicle in the intersection with the right rear window shattered and divots in the vehicle's body. Neighbors were standing on the street corners and Tirado was covered with blood and standing outside the car. Avila was in the driver's seat, unresponsive and breathing with difficulty.

Officers canvassed the neighborhood, finding neighbors that heard the shooting, but they did not find anyone who had seen the shooting. An officer interviewed Tirado at the scene and Tirado claimed "that all he knew was that they'd been driving and then he heard five shots and the car came to a stop and he exited and -- and ran." RP at 274. Tirado's answers confused police because he stated that the car came up behind them as they traveled north on Fairmont but also eastbound on 26th Street. At some point, Tirado clarified that Avila drove in reverse on 26th Street. But Tirado later acknowledged that he did not tell the police everything he knew that evening. The officers did not find any weapons on Tirado or Avila. Investigators, who returned to the scene during the following day, could not find spent shell casings, which led them to believe the shooter used a revolver.

Police eventually received a citizen's tip that Campos was the shooter. Campos was not known to the Vancouver police and did not have a criminal history. Campos originally came from El Salvador and lived in Los Angeles, where he joined the MS-13 gang. He left California in part "to no longer be down there and involved in that particular climate of activity within the gangs." RP at 396.

Campos told police that he had been in a confrontation with some Nortenos before the shooting:

> [H]e had been in his aunt's car. He had been at the Town Pump gas station. He had been jumped by some Nortenos. [He l]eft that area, was followed.
>
> And then going to the intersection of 26th and Fairmont, exited his car at some point. And then told us that he had a .22-caliber revolver in his backpack,

> told us that he took it out of his -- out of the backpack, put it in his front waistband of his pants.
>
> Told us that he saw the passenger get out of the . . . Honda, start to walk towards him, yelling at him, waving his arms, and then that he appeared to be angry while he was yelling at him.
>
> Mr. Campos stated that he used his gun to shoot at the car to scare them. Told us that the passenger ran back to the car, got in, and then he fired the rest of the bullets at the car.[13]
>
> He told us that he did hear the glass break but he didn't know at that time in his initial statement if anybody even hit when he'd shot (sic).
>
> . . . .
>
> As soon as he was done shooting, he said [he] got into his car, started it, and drove out to a park in Battle Ground, where he spent some time thinking about what had just taken place.
>
> Said that he returned home and -- from the park, and about a week later he said he drove to Shasta Lake in California, where he threw the gun into a lake where he knew it was deep.

RP at 401-02. Campos also helped to create several diagrams of the shooting, one of which showed him shooting from behind Avila's car.

The police investigated the Town Pump incident Campos referred to and discovered that Kevin Matlock, a cashier at the Town Pump, was on duty October 11 from 4:00 pm until 2:00 am.[14] Matlock explained[15] that he did not see Campos[16] involved in any altercation with Nortenos other than in an incident two weeks earlier.

Two weeks earlier, Campos purchased items from the station and, after he exited, two

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[13] When at least one of the shots entered the car, the passenger window was open and the door was closed.

[14] The Town Pump did not preserve videotape recordings from this period as part of its retention policy.

[15] Matlock talked to the police when initially questioned but later resisted testifying when the police arrested him for drug possession—he agreed to testify if the State dropped the charges against him. Matlock explained that he did not want trouble with Nortenos or Surenos and that both of these gangs were customers at the Town Pump.

[16] Matlock stated that he usually saw Campos dressed in blue and white.

Hispanic or Mexican men[17] dressed in red[18] drove up to the Town Pump, exited their car, threw up their arms in an aggressive manner, and asked Campos numerous times, "[']what set he claimed[']" and where he was from. RP at 29. In response, Campos "lifted up his shirt and pointed to his midsection, said, [']This is what I claim, and I want no problems.[']" RP at 629. Matlock could not see what Campos displayed when he lifted his shirt.

Matlock asked the men to stop their confrontation because violence and a police visit could affect Town Pump's business. Campos left and, while one man purchased alcohol, the other man tried to watch Campos's departure. The men asked Matlock which way Campos went but Matlock told them he did not know. The men departed in the direction they thought Campos went.

The trial court instructed the jury on first degree murder, attempted first degree murder, and premeditation. The trial court also instructed the jury on second degree murder, first degree assault, second degree assault, and self defense. The jury convicted Campos of first degree murder of Avila and attempted first degree murder of Tirado.

Sufficiency of the Evidence

Campos argues that sufficient evidence does not support the premeditation element of his first degree murder conviction or the attempted first degree murder conviction. He argues that he might have only fired at the victims' car because it suddenly began backing toward him and also

[17] One man was large and the other was a more normal size, but neither man was Tirado nor Avila—regulars at the Town Pump for a few years. Campos was larger than Tirado but only "somewhat" smaller than Avila. RP at 411. Matlock never saw Campos in an altercation with Tirado or Avila.

[18] Matlock assumed that the two men were Norteno gang members.

that the jury only found premeditation because he was a gang member who shot at rival gang members. The State argues that there is sufficient evidence for a trier of fact to find premeditation because Campos armed himself, initiated the sequence of events, stopped, exited his car, walked toward the victims' car, fired seven bullets into the victims' car, and had, arguably, led the victims to "a secluded neighborhood, anticipating that there would be some type of conflict." We agree with the State.

A. Standard of Review

When reviewing sufficiency issues, we view the evidence in the light most favorable to the State to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

B. Gang Evidence

Evidence of a defendant's gang membership may be relevant and admissible to show motive and premeditation. *See State v. Boot*, 89 Wn. App. 780, 789-90, 950 P.2d 964 (1998). And we defer to the trier of fact on any issue that involves "conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), *abrogated in part on other grounds*, *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

Reviewing the evidence in the light most favorable to the State and all reasonable

inferences from it, the State's evidence showed that Campos was a MS-13 gang member, which is connected to the Sureno gang and which is active in Vancouver and a Norteno gang rival. Campos regularly wore blue, the Sureno gang's color, and had worn blue on the day that two men dressed in red, the Norteno gang's color, confronted him at the Town Pump, asking him "what set he claimed" and his geographic origins. Matlock, the attendant on duty at the Town Pump the night of the shooting, was not aware of any other incident involving Campos and Nortenos.

Furthermore, expert testimony established that Nortenos, Surenos, and MS-13 gang members generally require retribution for acts of disrespect. This expert also testified that leaders of the Sureno gang ordered members to stop drive-by shootings; instead, members must exit their vehicles before shooting at others. This evidence supports the jury's finding that Campos acted with premeditated intent.

C. Premeditation

The State also presented sufficient evidence of premeditation for the shooting of Avila and Tirado. As our Supreme Court has explained,

> Premeditation has been defined as "the deliberate formation of and reflection upon the intent to take a human life", *State v. Robtoy*, 98 Wn.2d 30, 43, 653 P.2d 284 (1982), and involves "the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short." *State v. Brooks*, 97 Wn.2d 873, 876, 651 P.2d 217 (1982). Premeditation must involve more than a moment in point of time.

State v. Ollens, 107 Wn.2d 848, 850, 733 P.2d 984 (1987).

Two weeks after Campos's Town Pump encounter with possible Norteno gang members, Campos pulled up next to a car with Avila and Tirado, saw that Tirado was wearing red, and gave them dirty looks—i.e., "mean mugging" them. Campos pulled his car ahead of Avila's and Avila

followed at a normal rate until Campos turned left on 26th. Campos armed himself with a .22 caliber revolver, exited his car, walked toward Avila's car, rapidly fired the contents of the revolver at the passenger side of Avila's car from roughly 12 feet away, returned to his car, drove away, and disposed of the gun in California's Shasta Lake. Tirado, who testified that he did not exit the car before Campos departed, ducked and was uninjured, but Avila died from a bullet wound to the back of his head.

The jury heard Campos's recorded statement to the police in addition to the other witness testimony and viewed the exhibits, including Campos's drawings of the shooting scene. Both sides argued their interpretation of the evidence in closing: the State argued that this incident was a premeditated killing in response to a confrontation at the Town Pump two weeks earlier and Campos argued that the incident was justified as self defense or he did not act with premeditation because there was insufficient time and deliberation for him to form premeditated intent to shoot Avila and Tirado. The jury convicted Campos of first degree murder of Avila and attempted first degree murder of Tirado.

We do not review credibility determinations or weigh the evidence but, rather, defer to the fact finder. *Thomas*, 150 Wn.2d at 874-75. We hold that the evidence was sufficient for any rational trier of fact to have found beyond a reasonable doubt that Campos formed the premeditated intent to kill Avila and and Tirado and that his gang membership provided a motive

for the shootings.

Affirmed.

We concur:

Van Deren, C.J.

Houghton, J.

Quinn-Brintnall, J.